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7 LYNWOOD INVESTMENTS CY  
8 LIMITED,  
9 Plaintiff,  
10 v.  
11 MAXIM KONOVALOV, et al.,  
12 Defendants.

Case No. 20-cv-03778-MMC

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTIONS FOR ATTORNEYS' FEES**

Re: Dkt. Nos. 173, 174

13 Before the Court are the following two motions, both filed September 30, 2022:  
14 (1) defendants F5, Inc., NGINX., Inc. (BVI), and NGINX Software, Inc.'s (collectively, "F5  
15 Entities") "Motion for Attorney's Fees," and (2) defendants Maxim Konovalov, Igor  
16 Sysoev, Andrey Alexeev, Maxim Dounin, Gleb Smirnoff, and Angus Robertson's  
17 (collectively, "Individual Defendants") "Motion for Attorneys' Fees." Plaintiff, Lynwood  
18 Investments CY Limited ("Lynwood"),<sup>1</sup> has filed opposition, to which defendants have  
19 replied. By order filed December 20, 2022, the Court afforded the parties leave to file  
20 supplemental briefing, which the parties subsequently filed. (See Am. Order Finding  
21 Defs. Entitled To Attorneys' Fees; Affording Defs. Leave to Suppl. Mot. as to Amount;  
22 Setting Briefing Schedule, Dec. 20, 2022, Dkt. No. 184 ("December 20 Order").) Having  
23 read and considered the papers filed in support of and in opposition to the motions,  
24 including the parties' supplemental briefs, the Court rules as follows.<sup>2</sup>

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26 <sup>1</sup> On September 2, 2022, Lynwood informed the Court it had changed its name to  
27 Hemma Investments CY Limited. (See Joint Case Mgmt. Statement and Rule 26(f) Rep.,  
Dkt. No. 165.) For purposes of clarity, the Court continues to refer to plaintiff as  
Lynwood, as it has in all prior orders in the above-titled action.

28 <sup>2</sup> The matter stood submitted as of February 21, 2023, the deadline for the filing of

**BACKGROUND<sup>3</sup>**

On June 8, 2020, Lynwood filed its initial complaint in the instant action, seeking over \$750 million in damages assertedly resulting from an alleged conspiracy, between the F5 Entities and the Individual Defendants, to steal a “popular web server enterprise” from Rambler Internet Holding LLC (“Rambler”), a Russian software company at which the Individual Defendants, with the exception of Robertson, had worked. (See Am. Compl. (“AC”) ¶¶ 1, 19, Dkt. No. 141.) According to Lynwood, Rambler assigned its intellectual property rights to Lynwood in 2015. (See AC ¶ 457.)

By two orders filed, respectively, on March 25, 2021, and March 30, 2021, the Honorable Lucy H. Koh, to whom the above-titled action previously was assigned, granted defendants’ motions to dismiss the initial complaint, after which this Court, by its August 16 Order, granted defendants’ motion to dismiss the AC.

By their instant motion, the F5 Entities seek, pursuant to the Copyright Act, see 17 U.S.C. § 505, attorneys’ fees in the amount of \$837,602.15, comprising \$705,711.05 for defending against Lynwood’s direct copyright infringement claim, and \$131,891.10 for defending against four claims they describe as “related claims.” (See F5 Entities’ Mot. for Attorney’s Fees; Mem. of P. & A. (“F5 Entities’ Mot.”) at 17:2, 18:11-14, Dkt. No. 173); see also § 505 (providing court may “award a reasonable attorney’s fee to the prevailing party” in action under Copyright Act). Similarly, the Individual Defendants, by their motion, seek, pursuant to § 505, attorneys’ fees in the amount of \$769,299.10, comprising \$263,300.35 for defending against the direct copyright infringement claim, and \$505,998.75 for defending against six “related claims.”<sup>4</sup> (See Indiv. Defs.’ Mot. at

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supplemental replies. (See December 20 Order at 15:16-17.)

<sup>3</sup> The factual and procedural background of this action is set forth in greater detail in prior orders. (See Order Granting Mot. to Dismiss, Aug. 16, 2022, Dkt. No. 162 (“August 16 Order”); see also December 20 Order.)

<sup>4</sup> Initially, in their motion, the Individual Defendants sought \$507,066.75 for defending against the six purportedly related claims. (See Mot. for Attorneys’ Fees by Indiv. Defs.; Mem. of P. & A. (“Indiv. Defs.’ Mot.”) at 2:27, Dkt. No. 174.) Subsequently, in their supplemental briefing, they corrected that amount to \$505,998.75, having

1 2:18-19, 2:26-27.)

## 2 DISCUSSION

3 An analysis under § 505 “entail[s] two separate determinations: first, deciding  
4 *whether* an award of attorney’s fees is appropriate and, second, calculating the amount of  
5 the award.” See Stern v. Does, 2011 WL 13124449, at \*2 (C.D. Cal. May 4, 2011), aff’d,  
6 512 F. App’x 701 (9th Cir. 2013) (internal quotation and citation omitted) (emphasis in  
7 original). In the instant action, the Court ruled on the first question in its December 20  
8 Order, finding each of the defendants is entitled to an award of such fees. Absent  
9 submission of contemporaneous time records, however, the Court was unable to  
10 determine the appropriate amount of fees to be awarded. In light thereof, the Court  
11 afforded defendants leave to submit those records, and all parties were afforded leave to  
12 file supplemental briefing. The parties having done so, the Court now turns to the second  
13 question in the § 505 analysis, namely, calculating the amount of fees to be awarded.<sup>5</sup>

14 Lynwood makes two challenges to the defendants’ respective requested amounts  
15 of fees. First, Lynwood argues “there is no basis to extend Section 505 fees to non-  
16 copyright claims.” (See Pl.’s Mem. of P. & A. in Opp’n to Defs.’ Mots. for Attorneys’ Fees  
17 (“Pl.’s Opp’n”) at 22:11-12, Dkt. No. 178.) Second, Lynwood argues the fees sought are  
18 “facially unreasonable and excessive.” (See *id.* at 24:1.) The Court considers below

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20 \_\_\_\_\_  
21 “identified three time entries” totaling \$1,068 “that should properly be deducted . . .  
22 because . . . those entries relate to work on trademark claims that is not being sought  
23 pursuant to . . . stipulation.” (See Indiv. Defs.’ Suppl. Submission Regarding Amount of  
24 Attorneys’ Fees at 2:25-3:4, Dkt. No. 185.) Although the Individual Defendants, in  
subtracting the above-referenced sum, arrived at a total claimed amount of \$505,988.75  
(see *id.* at 1:14), the Court notes that a reduction of \$1,068 from \$507,066.75 actually  
results in the slightly higher figure of \$505,998.75, which sum the Court has used in  
calculating a fee award.

25 <sup>5</sup> The Court, in discussing defendants’ arguments made in the initial round of  
26 briefing, has not distinguished between those made by the F5 Entities and those made by  
the Individual Defendants, the latter having “join[ed] in and incorporate[d] by reference”  
27 the F5 Entities’ arguments that are addressed herein. (See Indiv. Defs.’ Mot. at 5 n.4;  
see also Indiv. Defs.’ Reply Brief in Supp. of Mot. for Attorneys’ Fees (“Indiv. Defs.’  
Reply”) at 2:8-9, Dkt. No. 181.) As defendants present distinct arguments in their  
supplemental briefs, however, the Court discusses those arguments separately.

1 each challenge in turn and, before doing so, addresses defendants' contention that  
2 Lynwood has waived certain of the arguments it makes in support of those challenges.

3 **A. Waiver**

4 At the outset, defendants contend Lynwood, by "failing to raise . . . in its opening  
5 briefing" various arguments it raises in its supplemental opposition, "waived" those  
6 arguments. (See F5 Entities' Suppl. Reply in Supp. of Their Mot. for Attorney's Fees ("F5  
7 Entities' Suppl. Reply") at 4:5-6, Dkt. No. 199; see also Indiv. Defs.' Suppl. Reply in Supp.  
8 of Their Mot. for Attorneys' Fees ("Indiv. Defs.' Suppl. Reply") at 2:18, Dkt. No. 200.)

9 First, the F5 Entities argue, Lynwood waived its challenge to any fees claimed for  
10 "general defense work" (see F5 Entities' Suppl. Reply at 4:4) and also to the hourly rates  
11 sought (see id. at 9:12). In support thereof, however, the F5 Entities cite to Nathanson v.  
12 Polycom, Inc., 2015 WL 12964727 (N.D. Cal. Apr. 16, 2015), a case wherein the district  
13 court "declin[ed] to consider an issue first raised on reply," see id. at \*1 (citation omitted),  
14 leaving the other party with no opportunity to respond. Here, by contrast, the F5 Entities,  
15 in their supplemental briefing, have had an opportunity to respond to any arguments  
16 Lynwood raises for the first time in its supplemental briefing.

17 Next, the Individual Defendants argue, Lynwood waived its challenge to fees  
18 claimed for "hybrid" or 'case management tasks,' work on non-copyright claims, and to  
19 defense counsel's hourly rates. (See Indiv. Defs.' Suppl. Reply at 3:10-19.) The  
20 authority on which the Individual Defendants rely, Novalk, LLC v. Kinsale Ins. Co., 2021  
21 WL 4134741 (S.D. Cal. Sept. 10, 2021), however, likewise is distinguishable, in that the  
22 plaintiff therein failed to file any opposition, see id. at \*2 (construing "[p]laintiff's failure to  
23 oppose [d]efendant's [m]otion as consent to granting the [m]otion"), whereas, in the  
24 instant case, Lynwood has filed opposition, and indeed, it has done so twice.

25 The Individual Defendants' additional argument likewise is unpersuasive. In  
26 particular, the Individual Defendants assert, Lynwood's supplemental opposition  
27 "exceeds the limited purpose set forth in the Court's [December 20 Order]" by "seek[ing]  
28 to litigate whether fees for 'hybrid' or 'case management' tasks . . . are recoverable," by

1 “seek[ing] to reargue whether [they] can recover fees for non-copyright claims as a matter  
2 of law,” and by “belatedly attempt[ing] to challenge the hourly rates sought by counsel.”  
3 (See Indiv. Defs.’ Suppl. Reply at 2:19-20, 3:9-10.) Nothing in the Court’s December 20  
4 Order, however, limited the scope of the supplemental briefing in the manner the  
5 Individual Defendants contend. In the December 20 Order, the Court determined  
6 defendants were entitled to fees but allowed supplemental briefing as to the amounts  
7 claimed. As the above-referenced three arguments pertain thereto, the Court, contrary to  
8 the Individual Defendants’ urging, will not “disregard the portions of Lynwood’s  
9 Supplemental Opposition that address [them].” (See *id.* at 4:2-3.)

10 Accordingly, the Court, considering all arguments raised in the initial and  
11 supplemental rounds of briefing, turns next to the first of Lynwood’s above-referenced  
12 challenges, namely, whether defendants may recover fees incurred in defending against  
13 the non-copyright claims.

14 **B. Non-Copyright Claims**

15 Where a party seeks fees under § 505 for copyright and non-copyright claims, “the  
16 first step in the calculation of a reasonable attorney’s fee [is] to decide if the copyright and  
17 non-copyright claims are related,” in that “a party entitled to attorney’s fees as a  
18 prevailing party on a particular copyright claim . . . can only recover attorney’s fees  
19 incurred in defending against that one claim or any related claims.” See The Traditional  
20 Cat Ass’n, Inc. v. Gilbreath, 340 F.3d 829, 833 (9th Cir. 2003) (internal quotation, citation,  
21 and alteration omitted).

22 Here, the four non-copyright claims for which the F5 Entities seek fees as related  
23 claims are Lynwood’s (1) Eighth Claim for Relief, titled “Aiding and Abetting by F5 of the  
24 Disloyal Employees’ Fraud and Breaches of Their Duties of Honesty and Loyalty to  
25 Rambler,” (2) Ninth Claim for Relief, titled “Tortious Interference with Contract Against  
26 Konovalov, Robertson, NGINX Software, Inc., NGINX BVI, and NGINX DE,” (3) Twelfth  
27 Claim for Relief, titled “Tortious Interference with Prospective Business Advantage  
28 Against All Defendants,” and (4) Thirteenth Claim for Relief, titled “Fraud Against the

1 Disloyal Employees, NGINX Software, Inc., NGINX DE and NGINX BVI.” The six non-  
2 copyright claims for which the Individual Defendants seek fees as related claims are  
3 Lynwood’s (1) First Claim for Relief, titled “Breach of Employment Obligations Owed by  
4 Konovalov to Rambler,” (2) Second Claim for Relief, titled “Breach of Employment  
5 Obligations Owed by Sysoev to Rambler,” (3) Fourth Claim for Relief, titled “Breach of  
6 Konovalov’s Duty to Act Fairly and Honestly With Rambler,” as well as the above-  
7 referenced (4) Ninth Claim for Relief, (5) Twelfth Claim for Relief, and (6) Thirteenth  
8 Claim for Relief.

9 “To determine whether . . . claims are related,” the Ninth Circuit has instructed  
10 district courts to “focus on whether the claims . . . involve a common core of facts or are  
11 based on related legal theories.” See Shame On You Prods., Inc. v. Banks, 893 F.3d  
12 661, 669 (9th Cir. 2018) (internal quotation and citation omitted) (emphasis in original)  
13 (finding “copyright claim” and “contract claim” related where both “turned on whether or  
14 not [d]efendants had copied” work at issue therein). “[U]nrelated claims are those that  
15 are ‘entirely distinct and separate from the claims on which the plaintiff prevailed.’” See  
16 Thomas v. City of Tacoma, 410 F.3d 644, 649 n.5 (9th Cir. 2005) (internal quotation and  
17 citation omitted).

18 Here, Lynwood argues, the F5 Entities’ timesheets “confirm” the copyright and  
19 non-copyright claims are unrelated. (See Pl.’s Suppl. Mem. of P. & A. in Opp’n to the F5  
20 Defs.’ Mots. for Attorneys’ Fees (“Pl.’s Suppl. Opp’n to F5 Entities”) at 4:18, Dkt. No.  
21 194.) Specifically, Lynwood asserts, “[o]nly one of the five partners,” Benjamin Fox  
22 (“Fox”), “spent any material time addressing the copyright claim” but “billed exactly zero  
23 minutes . . . to any of the purportedly ‘related’ non-copyright claims.” (See id. at 4:20-21,  
24 5:6-7.) If the claims were related, Lynwood argues, “Fox would have been at least  
25 somewhat involved in defending the non-copyright claims.” (See id. at 5:4-5.) The Court  
26 is not persuaded. As the F5 Entities point out, “other key team members, such as co-  
27 lead counsel [Michael] Jacobs and [Jessica] Grant, as well as [Cooper] Spinelli, worked  
28 on both the copyright and [the above-referenced four claims]” (see F5 Entities’ Suppl.

1 Reply at 3:22-24), and the F5 Entities attribute Fox’s focus on the copyright claim to  
2 “efficient time management” (see id. at 3:18-19); see also Moreno v. City of Sacramento,  
3 534 F.3d 1106, 1115 (9th Cir. 2008) (holding district court “may not attempt to impose its  
4 own judgment regarding the best way to operate a law firm, nor to determine if different  
5 staffing decisions might have led to different fee requests”).

6 Lynwood’s similar argument as to the Individual Defendants’ timesheets likewise is  
7 unpersuasive. In particular, Lynwood asserts, the Individual Defendants’ “lead copyright  
8 partner,” Bruce Baber, “spent no time addressing any non-copyright claim,” while “no one  
9 on his team [other than Baber] spent any time addressing the copyright claim” and,  
10 instead, “worked on the non-copyright claims.” (See Pl.’s Suppl. Mem. of P. & A. in  
11 Opp’n to Indiv. Defs.’ Mots. for Attorneys’ Fees (“Pl.’s Suppl. Opp’n to Indiv. Defs.”) at  
12 7:16-19, Dkt. No. 195; see also Decl. of Bruce W. Baber in Supp. of Indiv. Defs.’ Mot. for  
13 Attorneys’ Fees (“Baber Decl.”) ¶ 12, Dkt. No. 174-1.) The Court’s focus, however,  
14 should not be on how work was assigned among attorneys, but, rather, “on whether the  
15 claims . . . involve a common core of facts *or* are based on related legal theories,” see  
16 Shame On You, 893 F.3d at 669 (internal quotation and citation omitted) (emphasis in  
17 original); see also Moreno, 534 F.3d at 1115. The Court thus turns to that question.

18 In Lynwood’s direct copyright infringement claim, the Fourteenth Claim for Relief,  
19 Lynwood alleged it is “the owner by assignment, of all right, title and interest in and to  
20 NGINX Plus and Open Source NGINX,<sup>[6]</sup> in both source code and executable form,  
21 conceived and/or developed before the end of 2011 . . . (collectively, ‘Pre-2012 NGINX  
22 Software’)” (see AC ¶ 745), and that the “Direct Copyright Infringement Defendants,”  
23 namely, Konovalov, Sysoev, Smirnoff, Alexeev, Dounin, NGINX Software, Inc., NGINX  
24 BVI, NGINX DE, Robertson, and F5, “directly infringed upon [Lynwood’s] copyright rights  
25 in and to the Pre-2012 NGINX Software” (see AC ¶ 761) by, inter alia, “download[ing] the

26  
27 <sup>6</sup> As defined in the AC, “NGINX Plus” is “proprietary NGINX software code” and  
“Open Source NGINX” is “NGINX software released to the public as ‘open source’ code.”  
28 (See AC ¶¶ 9, 15.)

1 Pre-2012 NGINX Software and derivatives thereof, as well as cop[ying], distribut[ing] and  
2 creat[ing] derivative works of same" (see AC ¶ 758), and "introduc[ing] 20 or more  
3 commercial releases of NGINX Plus" (see AC ¶ 759).

4 In its First and Second Claims for Relief, Lynwood asserted such acts of  
5 infringement constituted breaches of contractual obligations owed to Rambler by,  
6 respectively, Konovalov and Sysoev (see AC ¶¶ 579, 590), and, in its Ninth Claim for  
7 Relief, asserted such acts constituted tortious interference by Konovalov, Robertson,  
8 NGINX Software Inc., NGINX BVI, and NGINX DE with those contractual obligations  
9 owed by Sysoev (see AC ¶¶ 658-59). Similarly, in its Fourth Claim for Relief, Lynwood  
10 asserted such acts of infringement constituted breaches of Konovalov's "duties to act  
11 fairly reasonably and in the best interests of Rambler" (see AC ¶¶ 606-08), and, in its  
12 Eighth Claim for Relief, Lynwood asserted F5, Inc. "aid[ed] and abett[ed]" those breaches  
13 (see AC ¶¶ 645-46). In its Twelfth Claim for Relief, Lynwood asserted defendants'  
14 alleged "copyright infringement" interfered with Rambler's prospective economic  
15 advantage. (See AC ¶ 694.) Lastly, in its Thirteenth Claim for Relief, Lynwood asserted  
16 Konovalov, Sysoev, Smirnoff, NGINX Software Inc., NGINX BVI, and NGINX DE  
17 engaged in "fraudulent conduct" whereby they misappropriated the copyrighted work at  
18 issue. (See AC ¶¶ 721-22.)

19 As set forth above, each of the assertedly related claims shares a common core of  
20 facts with the copyright claim, in that each is predicated on Lynwood's assertion that  
21 defendants infringed its copyright. See Twentieth Century Fox Film Corp. v. Ent. Distrib.,  
22 429 F.3d 869, 884 (9th Cir. 2005) (finding "unfair competition and slander claims" were  
23 "sufficiently related" to copyright claim where they "[we]re predicated on [plaintiff's]  
24 assertion that [defendant] did not own the copyright" to the book at issue therein). Put  
25 another way, this is not a case wherein the "course of conduct" underlying the purportedly  
26 related claims can be said to be "entirely distinct and separate from the course of conduct  
27 that gave rise to" the claim for which statutory fees are provided. See Schwarz v. Sec'y  
28 of Health & Hum. Servs., 73 F.3d 895, 903 (9th Cir. 1995).

1       Similarly, Lynwood's copyright claim and the above-listed non-copyright claims,  
2 albeit having elements in addition to those of a copyright claim, are based on related  
3 legal theories. See, e.g., Shame on You, 893 F.3d at 669 (finding copyright claim and  
4 breach of contract claim were "based on related legal theories" where they "arose out of  
5 the same set of facts and circumstances"); (see also Pl.'s Opp'n at 21:27-22:1  
6 (acknowledging "misappropriation of Opensource NGINX and NGINX Plus [was] one of  
7 many ways in which [d]efendants breached their contractual and legal duties to  
8 Rambler").

9       Accordingly, the Court finds each of the above-referenced claims is, for purposes  
10 of awarding fees under § 505, related to the copyright claim, and next turns to Lynwood's  
11 second challenge to defendants' requested fees, namely, as noted, that the amount of  
12 fees sought is unreasonable and excessive.

### 13       **C. Fees Sought**

14       In making a fee award under § 505, a court must calculate "a reasonable  
15 attorney's fee." See Traditional Cat, 340 F.3d at 833. In determining that amount, the  
16 Court uses the "lodestar method," see In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d  
17 935, 941 (9th Cir. 2011), by which "the number of hours the prevailing party reasonably  
18 expended on the litigation (as supported by adequate documentation)" is multiplied by "a  
19 reasonable hourly rate for the region and for the experience of the lawyer," see id.

20       The Court first considers below the hourly rates requested by defendants, then  
21 turns to their claimed number of hours.

#### 22       **1. Hourly Rate**

23       "[T]he established standard when determining a reasonable hourly rate is the rate  
24 prevailing in the community for similar work performed by attorneys of comparable skill,  
25 experience, and reputation." See Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979  
26 (9th Cir. 2008) (internal quotation and citation omitted); see also Blum v. Stenson, 465  
27 U.S. 886, 895 n.11 (1984) (noting "[a] rate determined in this way is normally deemed to  
28 be reasonable, and is referred to—for convenience—as the prevailing market rate").

1 "Generally, when determining a reasonable hourly rate, the relevant community is the  
2 forum in which the district court sits." See Camacho, 523 F.3d at 979.

3 "To inform and assist the court in the exercise of its discretion, the burden is on the  
4 fee applicant to produce satisfactory evidence . . . that the requested rates are in line with  
5 those prevailing in the community . . ." See Blum, 465 U.S. at 895 n.11; see also  
6 Washington v. ViacomCBS, Inc., 2021 WL 6134375, at \*4 (C.D. Cal. Dec. 9, 2021)  
7 (noting "sworn declarations of knowledgeable counsel who practice in the relevant market  
8 constitute probative evidence supporting the reasonableness of a fee applicant's hourly  
9 rates"). In that regard, "[u]nless counsel is working outside his or her normal area of  
10 practice,' evidence that a billing rate was the usual rate the attorney charges for his or her  
11 services is evidence that the rate is comparable to the market rate." See Perfect 10, Inc.  
12 v. Giganews, Inc., 2015 WL 1746484, at \*5 (C.D. Cal. Mar. 24, 2015), aff'd, 847 F.3d 657  
13 (9th Cir. 2017) (alteration omitted) (quoting Moore v. James H. Matthews & Co., 682 F.2d  
14 830, 840 (9th Cir.1982) (noting "billing rates usually reflect, in at least a general way,  
15 counsel's reputation and status")).

16 Here, the relevant community is the Northern District of California, where the  
17 instant case was filed. With that in mind, the Court next considers the rates requested  
18 by, respectively, the F5 Entities and the Individual Defendants.

19 **a. F5 Entities**

20 The F5 Entities are represented by Morrison & Foerster LLP and seek fees for  
21 work performed by three partners, namely, Michael Jacobs ("Jacobs"), Jessica Grant  
22 ("Grant"), and Fox, at their respective hourly rates of \$1,200, \$1,000, and \$980 for 2020,  
23 their respective hourly rates of \$1,260, \$1,050, and \$1,029 for 2021, and, as to Jacobs,  
24 his hourly rate of \$1,293.75 for 2022. (See Decl. of Michael A. Jacobs in Supp. of the F5  
25 Entities' Mot. for Attorney's Fees ("Jacobs Decl.") ¶ 25, Dkt. No. 173-1.)<sup>7</sup> In addition, they

26  
27 <sup>7</sup> During the time work on the instant case was performed, the rates claimed, as  
28 set forth above, increased, by relatively modest amounts, which increases the Court finds  
reasonable. (See Jacobs Decl. ¶ 25.)

1 seek fees, at his hourly rate of \$840 for 2020 and \$882 for 2021, for work performed by  
2 Paul Goldstein (“Goldstein”), “of counsel to Morrison & Foerster since 1988.” (See id.  
3 ¶¶ 18, 25.)<sup>8</sup>

4 “[I]n an action under the Copyright Act, an award based on the actual rates  
5 charged by counsel has consistently been held to be reasonable under 17 U.S.C. § 505.”  
6 See Oracle USA, Inc. v. Rimini St., Inc., 209 F. Supp. 3d 1200, 1217 (D. Nev. 2016)  
7 (finding “the appropriate rates for counsel in th[e] copyright infringement action [there at  
8 issue] [were] the actual rates charged by counsel”); see also Kourtis v. Cameron, 358 F.  
9 App’x 863, 868 (9th Cir. 2009) (holding “district court’s calculation of an attorney’s fee  
10 award . . . based on the actual rates charged by [defendant’s] attorneys was reasonable  
11 under 17 U.S.C. § 505”).

12 Here, the F5 Entities, in addition to stating the rates claimed are the rates actually  
13 charged in defending the instant case, state those rates “are comparable to prevailing  
14 rates in the community for like-skilled professionals” (see Jacobs Decl. at 6:19-20), and,  
15 in support thereof, cite results from the American Intellectual Property Law Association  
16 (“AIPLA”) “Economic Survey Report” (see id. ¶ 26); see also Phigenix, 2019 WL  
17 2579260, at \*11 (noting “[i]n intellectual property cases, federal courts routinely rely on  
18 the [AIPLA] economic survey results published every other year”) (internal quotation and  
19 citation omitted). Specifically, the report “indicates that the mean billing rate for partners  
20 at private firms in the San Francisco Consolidated Metropolitan Statistical Area (CMSA)  
21 was \$665 in 2020, and the third quartile (75%) was \$903” (see Jacobs Decl. ¶ 26), while  
22 the “90th percentile . . . was [at least] \$1,200” (see F5 Entities’ Suppl. Reply at 10:19-21  
23 n.7). The requested partner rates thus fall between the 75th and 90th percentile of billing  
24 rates for intellectual property partners at private firms in San Francisco.

25 \_\_\_\_\_  
26 <sup>8</sup> The F5 Entities also seek fees for work performed by four associates at hourly  
27 rates that range between \$552 and \$787.50, as well as fees for work performed by two  
28 paralegals at hourly rates that range between \$224 and \$316 (see Jacobs Decl. ¶ 25),  
and have submitted evidence as to all of their qualifications and experience (see id.  
¶¶ 19-24). Lynwood does not challenge these rates.

1 To further show those rates are reasonable, the F5 Entities have submitted the  
2 following evidence as to the skill, experience, and reputation of the above-listed partners:  
3 (1) Jacobs, who “graduated from Yale Law School in 1983,” is “the co-founder of  
4 Morrison & Foerster’s Intellectual Property Practice Group[,] . . . [ha]s been a  
5 partner for 32 years[,] was awarded the California Lawyer Attorneys of the Year  
6 award three times,” and is “listed in Band 1 by *Chambers* in its California  
7 Intellectual Property category and in *Chambers Global* as a leading attorney for  
8 Intellectual Property.” (See Jacobs Decl. ¶ 13.)  
9 (2) Grant, who “graduated from the University of San Francisco School of Law in  
10 1995,” is “a nationally recognized trial lawyer” who “focuses on high-stakes  
11 business litigation matters, including complex cases involving copyright and  
12 trademark issues,” and was “named by Benchmark Litigation in its Top 250  
13 Women in Litigation 2022 list.” (See *id.* ¶ 15.)  
14 (3) Fox, who “graduated from the University of California at Los Angeles School of  
15 Law in 1997,” has “extensive experience in high-stakes intellectual property  
16 disputes involving copyright claims,” and was “recommended by The Legal 500  
17 in the areas of Copyright and Trademark Litigation.” (See *id.* ¶ 17.)  
18 (4) Goldstein, who “graduated from the Columbia Law School in 1967,” is the  
19 “Lillick Professor of Law at Stanford Law School,” a “widely-cited expert on  
20 copyright law and author of the five-volume treatise *Goldstein on Copyright* and  
21 co-author of the treatise *International Copyright: Principles, Law and Practice*  
22 (4th ed. 2019).” (See *id.* ¶ 18.)

23 Although “declarations filed by the fee applicant do not conclusively establish the  
24 prevailing market rate[,] [t]he party opposing the fee application has a burden of rebuttal  
25 that requires submission of evidence to the district court challenging the accuracy and  
26 reasonableness of the facts asserted by the prevailing party in its submitted affidavits.”  
27 See Camacho, 523 F.3d at 980 (internal quotation, citation, and alteration omitted).

28 Lynwood, in opposing the instant motion, argues the requested partner rates “far

1 exceed[]” the prevailing rate (see Pl.’s Suppl. Opp’n to F5 Entities at 9:9-10), citing in  
2 support thereof three cases wherein district courts awarded fees at rates considerably  
3 lower than those claimed here. In two of those cases, however, the courts were looking  
4 at market rates for, respectively, the years 2002, see *Yahoo!, Inc. v. Net Games, Inc.*,  
5 329 F. Supp. 2d 1179, 1191 (N.D. Cal. 2004), and 2014, see *Shame on You Prods., Inc.*  
6 v. Banks, 2016 WL 5929245, at \*14 (C.D. Cal. Aug. 15, 2016), aff’d, 893 F.3d 661 (9th  
7 Cir. 2018), and the rates claimed in the third, although for 2018-19, were discounted by  
8 the claimant to “rates from several years [earlier],” see *Big Baboon, Inc. v. SAP Am., Inc.*,  
9 2019 WL 5088784, at \*8 (N.D. Cal. Sept. 9, 2019), R. & R. adopted, 2019 WL 5102644  
10 (N.D. Cal. Oct. 11, 2019), aff’d, 819 F. App’x 928 (Fed. Cir. 2020).

11 “[I]n determining the prevailing market rate a district court abuses its discretion to  
12 the extent it relies on cases decided years before the attorneys actually rendered their  
13 services.” See *Camacho*, 523 F.3d at 981 (citing *Bell v. Clackamas County*, 341 F.3d  
14 858, 869 (9th Cir. 2003) (holding district court abused its discretion in applying market  
15 rates in effect more than two years before work performed)). The above-cited cases thus  
16 have little to no relevance as to the Court’s determination of a reasonable rate, and,  
17 particularly, given the above-discussed evidence submitted by the F5 Entities, by which  
18 they provide a detailed description of each attorney’s academic background, work history,  
19 areas of expertise, and, in a number of instances, professional recognitions. (See  
20 Jacobs Decl. ¶¶ 13-24; see also F5 Entities’ Suppl. Reply at 11:8-15.)

21 In addition to considering the “rate prevailing in the community for similar work  
22 performed by attorneys of comparable skill, experience, and reputation,” see *Camacho*,  
23 523 F.3d at 979, courts “[i]n establishing the reasonable hourly rate, . . . may take into  
24 account, among other factors, (1) the novelty and complexity of the issues; (2) the special  
25 skill and experience of counsel; (3) the quality of representation; and (4) the results  
26 obtained,” see *Phigenix*, 2019 WL 2579260, at \*11. Here, given the complexity of the  
27 case, the qualifications and experience of the F5 Entities’ attorneys, and the very  
28 successful result they obtained, the Court finds the requested rates are reasonable.

**b. Individual Defendants**

The Individual Defendants are represented by King & Spalding LLP and seek fees for work performed by four partners, namely, Bruce Baber (“Baber”), Shane Brun (“Brun”), Quyen Ta (“Ta”), and Jeanne Fugate (“Fugate”), based on hourly rates of \$990, \$890, \$890, and \$875, respectively. (See Baber Decl. ¶¶ 12-14.) In addition, they seek fees at an hourly rate of \$990 for work performed by the “lead Russian law partner,” Alla Naglis (“Naglis”). (See id. ¶ 16.)<sup>9</sup> All of the claimed rates remained unchanged over the period of time during which work on the instant case was performed and, as described by the Individual Defendants, were “significantly discounted and resulted from negotiations specific to this matter.” (See id. ¶ 11.)

Additionally, the Individual Defendants have submitted evidence that “the . . . rates in this matter are 5 to 15 percent below the 2021 AmLaw 50, top 75th percentile average standard rates for litigation” (see Baber Decl. ¶ 11), and, as further support, cite to the AIPLA economic survey results for 2020, which show \$903 was the third quartile rate charged by “other top IP lawyers” (see Indiv. Defs.’ Suppl. Reply at 15:3-4).

Lynwood, in opposition, renews its argument that the requested rates exceed the prevailing rate. (See Pl.’s Suppl. Opp’n to Indiv. Defs. at 13:1-5.)

As support for the reasonableness of the rates charged, the Individual Defendants have submitted the following evidence:

- (1) Baber, who “received [his] J.D. *cum laude* from Duke University in 1979,” has “over 40 years of experience representing clients in complex commercial and intellectual property disputes.” (See Baber Decl. ¶ 12.)
- (2) Brun, who “received his J.D. in 1995 from University of California Hastings College of Law,” has “over 20 years of experience specializing in intellectual

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<sup>9</sup> The Individual Defendants also seek fees for work performed by two “senior associates” at an hourly rate of \$775 and have submitted evidence as to their qualifications and experience. (See Baber Decl. ¶ 15.) Lynwood does not challenge this rate.

1 property and technology related matters.” (See id. ¶ 13.)

2 (3) Ta, who received “her J.D. from the University of California (Berkeley) School  
3 of Law,”<sup>10</sup> completed “a two-year judicial clerkship in the U.S. District Court for  
4 the Eastern District of California,” and “focuses her practice on high-stakes  
5 business disputes[,] including specializing in intellectual property litigation.”  
6 (See id.)

7 (4) Fugate, who received “her J.D. from New York University School of Law in  
8 2001,” completed “judicial clerkships in U.S. District Court for the Southern  
9 District of New York and the U.S. Court of Appeals for the Ninth Circuit,” and  
10 “specializes in complex civil litigation.” (See id. ¶ 14.)

11 (5) Naglis “was the lead Russian law partner on the King & Spalding team . . . ,  
12 with primary responsibility for the analysis of Russian law claims against the  
13 Individual Defendants and coordination with the Individual Defendants’ Russian  
14 law expert witness . . . .” (See id. ¶ 16.)

15 In light of the above, the Court finds the actual rates charged by the above-listed  
16 partners are reasonable, see Oracle, 209 F. Supp. 3d at 1217 (noting “in an action under  
17 the Copyright Act, an award based on the actual rates charged by counsel has  
18 consistently been held to be reasonable under 17 U.S.C. § 505”), and particularly, given  
19 the complexity of this case, the qualifications and experience of the Individual  
20 Defendants’ attorneys, and the very successful result they obtained, see Phigenix, 2019  
21 WL 2579260, at \*11.

22 With all of the above-established rates in mind, the Court next turns to the number  
23 of hours defendants claim as a basis for their fee request.

## 24 **2. Number of Hours**

25 “Reasonable hours are those hours that ‘would have been undertaken by a

26  
27 

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<sup>10</sup> Although the Individual Defendants do not provide the year in which Ta received  
28 her J.D., records from the State Bar of California show she was admitted in 2004.

1 reasonable and prudent lawyer to advance or protect his client's interest in the pursuit of  
2 a successful recovery." See Washington, 2021 WL 6134375, at \*5 (quoting Armstrong v.  
3 Davis, 318 F.3d 965, 971 (9th Cir. 2003)). Where, as here, "the plaintiff presents different  
4 claims for relief that 'involve a common core of facts' or are based on 'related legal  
5 theories,'" the Ninth Circuit has held that "the district court should not attempt to divide  
6 the request for attorney's fees on a claim-by-claim basis." See McCown v. City of  
7 Fontana, 565 F.3d 1097, 1103 (9th Cir. 2009). Rather, the "court must . . . 'focus on the  
8 significance of the overall relief obtained by the plaintiff in relation to the hours reasonably  
9 expended on the litigation.'" See id. Hours spent "that are 'excessive, redundant, or  
10 otherwise unnecessary,'" however, are not recoverable. See Gold Value Int'l Textile, Inc.  
11 v. Sanctuary Clothing, LLC, 2017 WL 8236267, at \*10 (C.D. Cal. Dec. 5, 2017), aff'd, 925  
12 F.3d 1140 (9th Cir. 2019) (quoting Welch v. Metro. Life Ins. Co., 480 F.3d 942, 946 (9th  
13 Cir. 2007)).

14 The Court considers below the number of hours claimed by, respectively, the F5  
15 Entities and the Individual Defendants.

16 **a. F5 Entities**

17 The F5 Entities seek an award of fees in the total amount of \$837,602.15,  
18 comprising \$151,416.58 in fees "incurred directly in response to the claim for direct  
19 copyright infringement" (see F5 Entities' Mot. at 17:11-12), \$131,891.10 in fees incurred  
20 in response to the above-discussed four related claims (see id. at 15:1-2, 18:10), and  
21 \$554,294.47 in fees incurred for "work on tasks that needed to be performed unrelated to  
22 a specific case theory or claim for relief" (see id. at 17:11-12), to which they refer as  
23 "general defense work" (see Jacobs Decl. ¶ 32). These amounts correspond to 174  
24 hours, 166 hours, and 657 hours of work, respectively, for a total of 997 hours. (See  
25 Jacobs Decl. ¶¶ 32-53.)<sup>11</sup>

26  
27 <sup>11</sup> The above-listed hours do not include time spent "briefing the motion to dismiss  
28 the original complaint," for which work the "firm charged a capped fee of \$375,000," and  
for which the F5 Entities seek \$104,166, i.e., 5/18 of the charged sum, as part of their fee  
request. (See Jacobs Decl. ¶ 31 (explaining initial complaint asserted eighteen claims

1       As discussed earlier herein, the Court has found the F5 Entities are entitled to fees  
 2 for defending against the copyright claim as well as the four related claims. As to fees  
 3 sought for “general defense work,” the F5 Entities, arguing they “had no choice other than  
 4 to cooperate in the conduct of the litigation until the copyright claim was dismissed  
 5 without leave to amend” (see F5 Entities’ Mot. at 17:21-22), assert those fees, namely,  
 6 “[f]ees incurred in addressing Lynwood-initiated discovery disputes, for the court-ordered  
 7 mediation, and for case management,” are “properly awarded as part of the direct costs  
 8 of defending Lynwood’s copyright infringement claims” (see id. at 17:14-16).

9       Contrary to Lynwood’s argument that the F5 Entities “cite[] no authority to support  
 10 the creation of a catch-all category to collect fees” for such general defense work (see  
 11 Pl.’s Suppl. Opp’n to F5 Entities at 2:10-11), the F5 Entities cite cases demonstrating the  
 12 Court may, in its discretion, award fees for such work (see F5 Entities’ Mot. at 17:17  
 13 (citing Shame On You, 893 F.3d at 670 (affirming fee award under § 505 for “hours . . .  
 14 expended in connection with . . . motions to compel discovery and . . . on preparation of  
 15 supplemental responses and production of documents”)); id. at 17:19 (citing Washington,  
 16 2021 WL 6134375, at \*6 (awarding fees under § 505 for “hours spent negotiating  
 17 settlement”)); see also F5 Entities’ Reply in Supp. of Their Mot. for Attorney’s Fees (“F5  
 18 Entities’ Reply”) at 12:23 n.6 (citing GraceHouse Grp., LLC v. Moraleja, 2019 WL  
 19 2998578, at \*4 (C.D. Cal. May 6, 2019) (awarding fees for “review of document requests”;  
 20 noting “reviewing written discovery . . . is a routine part of providing a vigorous  
 21 defense”))).<sup>12</sup>

22  
 23 \_\_\_\_\_  
 24 against F5 Entities, five of which were dismissed on F5 Entities’ motion).)

25       <sup>12</sup> The cases Lynwood cites, namely, Stern and Cupid Wines, Inc. v. Davies, 2008  
 26 WL 11400764, (C.D. Cal. May 20, 2008), are readily distinguishable on their facts. (See  
 27 Pl.’s Suppl. Opp’n to F5 Entities at 2:20-22 (citing Stern, 2011 WL 13124449, at \*5, aff’d,  
 28 512 F. App’x 701 (9th Cir. 2013) (excluding hours billed for work on certain dismissed  
 claims where fees sought were for work on copyright claim and not on those dismissed  
 claims)); id. at 2:22-25 (citing Cupid Wines, 2008 WL 11400764, at \*1-2 (excluding “fees  
 and costs related to general litigation efforts” where they “were likely to involve  
 consideration of [a] claim” court had already determined “c[ould not] be compensated”))).

1           In this instance, the Court finds it appropriate to award the F5 Entities fees  
2 incurred for work identified as general defense work, and next considers the  
3 reasonableness of the hours claimed for such work.

4           Of the \$554,294.57 the F5 Entities seek for general defense work, \$403,599.60 is  
5 attributable to 489.9 hours performed from July 2020 through October 2020. (See  
6 Jacobs Decl. ¶¶ 32-35.) During that time, any general defense work would have been in  
7 furtherance of all eighteen causes of action that were asserted against the F5 Entities in  
8 the initial complaint. Of those eighteen claims, twelve were stayed on October 22, 2020,  
9 and remained unadjudicated until Lynwood voluntarily dismissed them on September 9,  
10 2022. (See Stipulation of Dismissal of Remaining Claims, Dkt. No. 166.)<sup>13</sup> As to those  
11 unadjudicated claims, the parties agreed to bear their own fees and costs. (See id.)

12           Lynwood, in challenging the reasonableness of the hours claimed for general  
13 defense work, argues said work necessarily included work performed on the twelve  
14 unadjudicated claims as to which the parties stipulated no fees would be sought. In  
15 response, the F5 Entities argue, “to the extent general defense work may have  
16 overlapped with unadjudicated claims, the F5 Entities have already excluded such fees  
17 from the total they seek” (see F5 Entities’ Suppl. Reply at 6:18-20 (citing Jacobs Decl.  
18 ¶ 5)), in that they “are not seeking any fees for work performed by the partner and  
19 associates who led the response to Lynwood’s trademark-related claims” (see id. at 6:16-  
20 18; see also Jacobs Decl. ¶ 5) and “[t]he remaining [unadjudicated] claims were based on  
21 the same legal theories and facts as the adjudicated claims” (see F5 Entities’ Suppl.  
22 Reply at 6:20-21).<sup>14</sup>

23

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24           <sup>13</sup> The six claims asserted against the F5 Entities that were not stayed were the  
25 copyright claim, as initially pled, the four related claims, as initially pled, and a First Claim  
26 for Relief, titled “Civil Conspiracy Among the Team, Robertson, Runa Capital, E.  
Ventures, NGINX BVI, NGINX DE, NGINX Software, Inc., and BV NGINX” (see Compl. at  
86:5-7, Dkt. No. 1), which claim was dismissed on March 25, 2021, by Judge Koh, and  
which claim Lynwood did not re-assert in the AC filed April 29, 2021.

27

28           <sup>14</sup> Of the unadjudicated claims, seven were trademark claims. The remaining  
unadjudicated claims were the initial complaint’s Twelfth Claim for Relief, titled “Tortious  
Interference with Contract Against F5,” Sixteenth Claim for Relief, titled “Contributory

1       Under such circumstances, the Court finds the necessary deductions for the  
2 trademark claims have been made, and no further deductions based on the above-  
3 referenced stipulation need be taken, given that the remaining general defense work  
4 would have been performed irrespective of the status of the unadjudicated claims, all of  
5 which, as the F5 Entities note, were based, in essence, on the same facts and theories  
6 as the adjudicated claims.

7       Next, Lynwood challenges as “excessive” the number of hours claimed for work on  
8 a case that was resolved “at the pleading stage.” (See Pl.’s Suppl. Opp’n to F5 Entities  
9 at 11:3, 11:10.)<sup>15</sup> In response, the F5 Entities argue Lynwood’s actions over the course  
10 of the litigation “forced [them] to incur significant attorney’s fees and costs,” totaling over  
11 \$1.44 million, substantially more than the amount of fees they seek. (See F5 Entities’  
12 Mot. at 16:16-18.)

13       In particular, they point to Lynwood’s filing of an initial complaint “contain[ing] 140  
14 pages, 873 paragraphs, and 26 claims for relief against 12 defendants” (see *id.* at 4:18),  
15 which Judge Koh characterized as “unmanageably large” (see Dkt. No. 107), and which  
16 Lynwood subsequently amended to a “167-page complaint that was so prolix and  
17 confusing it required charts and addenda to decipher” (see F5 Entities’ Mot. at 2:8-9).

18       In addition, the F5 Entities point out, Lynwood, even after Judge Koh found the  
19 case “unmanageably large,” would not agree to a stay of discovery pending resolution of  
20 the defendants’ motions to dismiss, and instead “sought to pursue over 1,200 document  
21 requests,” which, as described by the F5 Entities, were “grossly disproportionate and  
22 improper,” in that they included “requests for F5’s future product lines, tax and other

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23  
24 Copyright Infringement Against All Defendants,” Seventeenth Claim for Relief, titled  
25 “Vicarious Copyright Infringement Against All Defendants,” Twenty-Fourth Claim for  
26 Relief, titled “False Advertising . . . as to All Defendants,” and Twenty-Sixth Claim for  
Relief, titled “Unjust Enrichment as to all Defendants,” and are based in essence on the  
same facts as the copyright claim and four related claims discussed above. (See  
Compl.)

27       <sup>15</sup> This challenge is to the claimed hours as a whole rather than to any particular  
28 subset thereof.

1 financial records, the identities of all F5's customers and all communications with those  
2 customers, all iterations of NGINX source code, and even information regarding  
3 Rambler." (See id. at 5:15-21); see also Mattel, Inc. v. MGA Ent., Inc., at \*8 (C.D. Cal.  
4 Aug. 4, 2011), aff'd, 705 F.3d 1108 (9th Cir. 2013) (finding "[i]t [was] equitable to  
5 reimburse [the defendant]" where, inter alia, "[the plaintiff] did not limit its discovery  
6 requests").

7 In light of the above, and having reviewed all of the F5 Entities' contemporaneous  
8 time records as well as the case record as a whole, the Court finds, with one exception  
9 resulting in a \$32,978.82 deduction,<sup>16</sup> the hours claimed were reasonably expended.

10 Accordingly, the Court finds the F5 Entities are entitled to \$804,623.33 in  
11 attorneys' fees.

12 **b. Individual Defendants**

13 The Individual Defendants seek \$769,299.10 in fees, comprising \$263,300.35  
14 incurred in connection with the direct copyright infringement claim, and \$505,998.75  
15 incurred in connection with the six related claims discussed earlier herein. (See Indiv.  
16 Defs.' Mot. at 2:18, 2:27, 3:1.) These amounts correspond to 267.7 and 1,358.8 hours of  
17 work, respectively, for a total of 1,626.5 hours (see Baber Decl. ¶¶ 24-90), which hours  
18 include "fees incurred for . . . case management tasks that were necessary to both the  
19 copyright claims and the related claims" (see Indiv. Defs.' Mot. at 2:28-3:1), i.e., fees  
20 characterized by the Individual Defendants as "fees for case management related tasks"  
21 (see Indiv. Defs.' Suppl. Reply at 6:7).

22 In challenging the amounts claimed, Lynwood first argues the Individual  
23 Defendants are "reneging on their stipulation" by seeking fees on the initial complaint's  
24

25 \_\_\_\_\_  
26 <sup>16</sup> The F5 Entities did not provide contemporaneous time records for the month of  
27 April 2021. The Court has considered only those hours that have been substantiated by  
28 such records, and, consequently, will reduce the total fee award by \$32,978.82, the  
amount of fees sought for work performed in April 2021. See Hensley v. Eckerhart, 461  
U.S. 424, 433 (1983) (holding "[w]here the documentation of hours is inadequate, the  
district court may reduce the award accordingly").

1 Sixteenth and Seventeenth Claims for Relief, i.e., the unadjudicated claims for  
2 contributory copyright infringement and vicarious copyright infringement, respectively, as  
3 to which the parties agreed to bear their own fees and costs. (See Pl.'s Opp'n at 3:17.)  
4 In support thereof, Lynwood, citing paragraphs in a declaration wherein defense counsel  
5 refers to "copyright claims" rather than "copyright claim," argues the "Individual  
6 Defendants readily admit that they are seeking fees for all the copyright claims." (See id.  
7 at 3:9 (citing Baber Decl. ¶¶ 22, 30, 38).) In response, the Individual Defendants state  
8 they "are not 'reneging on their stipulation'" and "[i]nstead, . . . properly seek . . . fees  
9 incurred in connection with . . . Count 14 for direct infringement, and the [r]elated [c]laims"  
10 (see Indiv. Defs.' Reply at 6:5-8), and Lynwood points to nothing in the contemporaneous  
11 time records indicating to the contrary.

12 Lynwood's next argument fares no better. In particular, Lynwood, again citing  
13 Stern and Cupid Wines, argues case management fees are not recoverable. (See Pl.'s  
14 Suppl. Opp'n to Indiv. Defs. at 5:1-6.) As set forth above, however, those cases are  
15 readily distinguishable. See supra Section C.2.a.

16 In sum, the Court finds the Individual Defendants are not precluded from claiming  
17 the above-referenced fees. Nevertheless, the Court's review of the contemporaneous  
18 time records submitted on their behalf reveals various deficiencies warranting reductions  
19 in the amounts claimed.

20 **i. Block Billing**

21 "Block billing is a method of time keeping by which lawyers and legal assistants  
22 enter the total time spent working on a group of tasks rather than itemizing how much  
23 time was spent on each specific task." See Randles Films, LLC v. Quantum Releasing,  
24 LLC, 2012 WL 12884046, at \*3 (C.D. Cal. Mar. 30, 2012), aff'd, 551 F. App'x 370 (9th Cir.  
25 2014). As the Ninth Circuit has observed, "block billing makes it more difficult to  
26 determine how much time was spent on particular activities." See Welch, 480 F.3d at  
27 948 (noting "fee applicant bears the burden of documenting the appropriate hours  
28 expended in the litigation"). In light thereof, "the district court may properly impose a

1 reduction for block billing.” See id.; see also Lahiri v. Universal Music & Video  
2 Distribution Corp., 606 F.3d 1216, 1222 (9th Cir. 2010) (finding no abuse of discretion by  
3 district court that “reduced 80% of . . . billable hours by 30%” after “review[ing] samples  
4 from the fee application and calculat[ing] an 80% block billing rate”).

5 Here, Lynwood has identified 182.9 hours of block-billed time in the  
6 contemporaneous time records submitted by the Individual Defendants, corresponding to  
7 \$141,054.50 in fees. (See Decl. of Alexander D. Pencu in Supp. of Pl.’s Suppl. Opp’n to  
8 Indiv. Defs.’ Mot. for Attorneys’ Fees (“Pencu Suppl. Decl.”), Ex. B (Dkt. No. 196).)  
9 Lynwood seeks a complete rejection, or, at a minimum, a 40% reduction, of these entries,  
10 to account for the “improper block-billing.” (See Pl.’s Suppl. Opp’n to Indiv. Defs. at 9:20-  
11 24.) In response, the Individual Defendants argue their block-billed entries “contain  
12 adequate descriptions about [the] timekeeper’s activities” and thus “are sufficient to  
13 evaluate whether the total block-billed hours were reasonable as a whole.” (See Indiv.  
14 Defs.’ Suppl. Reply at 10:7-10.)

15 Although courts, in some instances, have found “sufficiently detailed” block-billed  
16 entries to be “adequate,” see, e.g., Phigenix, 2019 WL 2579260, at \*18, here, the tasks  
17 that are block billed are of such disparate nature that the Court is unable “to determine  
18 whether the time requested for any one task was reasonable,” see Banas v. Volcano  
19 Corp., 47 F. Supp. 3d 957, 967 (N.D. Cal. 2014). For example, on July 28, 2020,  
20 Dawson recorded an entry for 9.2 hours with the following description:

21 Discuss motion to dismiss research with SE.; attend conference call with  
22 SE. Brunt bet Al.; review follow-up email; review current version of docket;  
23 research issues relating to service, including review of prior filings; draft  
24 talking points relating to service; research issues relating to introduction of  
foreign law and related email; review draft joint defense agreement; edit  
25 chart of claims and defenses; discuss the same with SE.; research issues  
relating to tortious interference with prospective economic advantage;  
research issues relating to standing.  
26 (See Decl. of Matthew H. Dawson in Supp. of Indiv. Defs.’ Admin. Mot to File Under Seal  
27 (“Dawson Decl.”), Ex. A at 11 (Dkt. No. 186-1).) Without knowing how much time was  
28 spent on each discrete task, e.g., reviewing a follow-up email as opposed to researching

1 a substantive legal issue, and indeed, without knowing the subject of the follow up, the  
2 Court is unable to determine if the time spent on any task, much less the total amount of  
3 time spent on all tasks, was reasonable.

4 Having reviewed the 182.9 hours of block-billed entries identified by Lynwood, the  
5 Court concludes that 168.3 hours, corresponding to \$129,309.50 in fees, are block billed  
6 in the manner described above.<sup>17</sup> In light thereof, the Court exercises its discretion to  
7 reduce by 20% those 168.3 hours of block-billed time identified by Lynwood. See Welch,  
8 480 F.3d at 948 (approving 20% reduction for block billing where district court relied on  
9 California State Bar Committee report, “which concluded that block billing ‘may increase  
10 [claimed] time by 10% to 30%’”).

11 Accordingly, the Court will reduce the total fee award by \$25,861.90.

12 **ii. Redactions**

13 “Heavy redactions render it impossible for the Court to discern how much time was  
14 expended on specific tasks.” See Randles Films, 2012 WL 12884046, at \*4. In light  
15 thereof, courts have declined to award fees for “heavily redacted time sheet entries.” See  
16 id. (noting “[d]efendants must . . . have a meaningful opportunity to dispute the  
17 reasonableness of time spent on each task”).

18 Here, Lynwood has identified 85.5 hours, corresponding to \$73,228.24 in fees,  
19 associated with time entries containing heavily redacted descriptions of work. (See  
20 Pencu Suppl. Decl. Ex. C.) For example, on September 9, 2020, Baber recorded an  
21 entry for 2 hours with the description, “Emails with REDACTED regarding REDACTED;  
22 follow up emails from REDACTED; further revisions to REDACTED regarding  
23 REDACTED.” (See Dawson Decl. Ex. B at 7.)

24 Having reviewed the redacted entries identified by Lynwood, the Court concludes

25  
26  
27 <sup>17</sup> The remaining 14.6 hours, corresponding to \$11,745 in fees, are attributable to  
28 entries the Court finds adequate albeit block-billed. See Phigenix, 2019 WL 2579260, at  
\*18.

1 those entries are heavily redacted in the manner exemplified above.<sup>18</sup>

2       Although the Individual Defendants argue “items were redacted to preserve the  
3 identities of potential witnesses, legal issues that have not been disclosed in briefing, and  
4 other privileged matters” (see Indiv. Defs.’ Suppl. Reply at 11:10-12), the Individual  
5 Defendants were “not without options” in terms of preserving the confidentiality of such  
6 matters while providing meaningful submissions for the Court’s review, see Randles  
7 Films, 2012 WL 12884046, at \*4 (noting party “could have lightly redacted the time sheet  
8 entries so that the Court could have had at least a general idea of what work was being  
9 performed” or “submitted a declaration explaining in new words the work that was done  
10 during th[o]se entries”).

11       Nonetheless, as the Individual Defendants contend, “Lynwood itself created the  
12 need for the privilege redactions.” (See Indiv. Defs.’ Suppl. Reply at 11:18.) Specifically,  
13 the Individual Defendants state they “offered to submit unredacted entries if Lynwood  
14 would agree that no waiver of the attorney-client privilege would result,” and Lynwood  
15 declined. (See id. at 11:19-21.) Lynwood does not dispute this version of events.

16       Given the above circumstances, the Court finds both parties bear some  
17 responsibility for the redacted entries identified by Lynwood, and, in light thereof, finds it  
18 appropriate to reduce those hours by 50%.

19       Accordingly, the Court will further reduce the total fee award by \$36,614.12.

20                   **iii. Vague Time Entries**

21       “Work entries are inadequately vague when the district court is unable to discern  
22 how the time spent is attributable to the case at hand.” See Santiago v. Equable Ascent  
23 Fin., 2013 WL 3498079, at \*5 (N.D. Cal. July 12, 2013). Courts in this District have found  
24 entries inadequate as vague where those entries “only consisted of ‘conferences,’  
25 ‘telephone calls,’ or ‘review of documents’ without describing the subject of the call or  
26 correspondence.” See, e.g., id.; see also Gilead Scis., Inc. v. Merck & Co., 2017 WL

27                   

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28                   <sup>18</sup> Lynwood has not suggested a percentage reduction for the redacted entries.

1 3007071, at \*8 (N.D. Cal. July 14, 2017) (finding “[d]escriptions such as ‘work on case  
2 coordination,’ ‘work on case strategy issue,’ ‘work on case facts,’ and ‘work on case  
3 arguments’” inadequate as vague).

4 Here, Lynwood has identified 74.4 hours, corresponding to \$66,790.89 in fees,  
5 associated with time entries containing vague descriptions of work. (See Pencu Suppl.  
6 Decl. Ex. D.) For example, on December 23, 2020, Fugate recorded an entry for 4 hours  
7 of work described as “[a]nalyze case issues, strategy.” (See Dawson Decl. Ex. F at 6.)

8 Lynwood seeks a complete rejection of all such hours. (See Pl.’s Suppl. Opp’n to  
9 Indiv. Defs. at 11:6-7.) Having reviewed the entries identified by Lynwood as “vague,” the  
10 Court concludes that approximately 70% of the entries so identified contain impermissibly  
11 vague descriptions. In light thereof, the Court exercises its discretion to reduce by 70%  
12 the 74.4 hours identified by Lynwood. See Gilead, 2017 WL 3007071, at \*8 (finding  
13 where “40 percent of the hours identified . . . [were] vague,” a “40% reduction [was]  
14 justified for vague entries”).

15 Accordingly, the Court will further reduce the total fee award by \$46,753.62.

16 **iv. Duplicate and Excessive Entries**

17 “The Ninth Circuit has approved reducing fees for unnecessary internal  
18 communications.” See In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod.  
19 Liab. Litig., No. 7640, 2020 WL 5371404, at \*10 (N.D. Cal. Sept. 8, 2020) (citing Welch,  
20 480 F.3d at 949).

21 Here, Lynwood contends the contemporaneous time records submitted by the  
22 Individual Defendants include “over 145 hours for vaguely described conference calls”  
23 and seeks a reduction of at least 50% of these hours. (See Pl.’s Suppl. Opp’n to Indiv.  
24 Defs. at 11:16-17, 12:16-17.) In contrast to its earlier-described challenges, Lynwood  
25 does not identify all of the entries corresponding to those 145 hours, but instead, points to  
26 “all time entries entered by . . . Ta” (see Pencu Suppl. Decl. ¶ 9, Ex. E), amounting to  
27 77.5 hours and corresponding to \$43,683.35 in fees, which entries, Lynwood contends,  
28 are “demonstrative of the type of excessive and duplicative time King & Spalding

1 attorneys billed for conference calls" (see Pl.'s Suppl. Opp'n to Indiv. Defs. at 11:26-27).  
2 Specifically, by Lynwood's calculation, "64% of [Ta's] entered time . . . was spent on  
3 conferences." (See id. at 12:11-12.) In response, the Individual Defendants do not  
4 dispute Lynwood's calculation, but explain "[t]he size and complexity of the dispute  
5 required a large team to coordinate on numerous issues . . . in both the United States  
6 and Russia . . . in the midst of a pandemic that precluded office meetings." (See Indiv.  
7 Defs.' Suppl. Reply at 13:7-11.) Given such circumstances, the Court finds the amount of  
8 conferencing identified was not, as a categorical matter, unreasonable.

9 Nonetheless, many of Ta's entries for conferencing are vague, in that they do not  
10 identify the topics of discussion. For example, on August 12, 2020, Ta recorded an entry  
11 for 4 hours of work described as "[a]ttend and participate in weekly joint defense call."  
12 (See Dawson Decl. Ex. B at 11.) In addition, in three instances, Ta entered duplicate  
13 entries, amounting to 4.1 hours. (See Dawson Decl. Ex A at 10, Ex. B at 18.)

14 Having reviewed the entries identified by Lynwood as demonstrative of excessive  
15 time billed for conference calls, the Court concludes that approximately 60% of the  
16 entries so identified are vague. In light thereof, the Court exercises its discretion to  
17 reduce by 60% the 145 hours Lynwood contends were billed "for vaguely described  
18 conference calls." (See Pl.'s Suppl. Opp'n to Indiv. Defs. at 11:17.)<sup>19</sup>

19 Accordingly, the Court will further reduce the total fee award by \$76,777.50,  
20 resulting in a final award in the amount of \$583,291.96.

## 21 CONCLUSION

22 For the reasons set forth above, defendants' motions are, respectively, hereby  
23 GRANTED in part and DENIED in part, as follows:

24  
25 \_\_\_\_\_  
26 <sup>19</sup> Lynwood does not provide the amount of fees to which these 145 hours  
27 correspond, and, as set forth earlier herein, the Individual Defendants seek fees at hourly  
28 rates that range between \$775 and \$990. For purposes of calculating the reduction in  
the amount of fees, the Court multiplies the 145 hours by \$882.50, the average of the  
sought rates. See Mattel, 2011 WL 3420603, at \*9 (noting "[t]he Supreme Court has  
recognized that 'rough justice' is sufficient in the context of fee awards").

1       1. The F5 Entities are awarded fees in the amount of \$804,623.33.  
2       2. The Individual Defendants are awarded fees in the amount of \$583,291.96.  
3       3. In all other respects, the motion is denied.

4

5       **IT IS SO ORDERED.**

6

7       Dated: April 11, 2023

8         
9       MAXINE M. CHESNEY  
10      United States District Judge